IN THE UNITED STATES ARMY FIRST JUDICIAL CIRCUIT

UNITED STATES)	
)	RULING CLARIFICATION:
₹.)	LESSER INCLUDED
)	OFFENSE MAXIMUM
MANNING, Bradley E., PFC)	PUNISHMENTS
U.S. Army, xxx-xx-(b) (6))	
Headquarters and Headquarters Company, U.S.)	
Army Garrison, Joint Base Myer-Henderson Hall,)	DATED: 26 October 2012
Fort Myer, VA 22211)	

On 19 July 2012 the Court issued a ruling regarding the maximum punishment for specification 1 of Charge II, and for the lesser included offense theories under clause 1 and 2 of Article 134 for the offenses charged under all 3 clauses of Article 134 (18 U.S.C. Section 641, 18 U.S.C. Section 793(e) and 18 U.S.C. 1030(a)(1)). The maximum punishments in that ruling assumed that the lesser included offenses under clauses 1 and 2 would include all of the elements charged except the clause 3 statute, where applicable. In the litigation culminating in the 19 July 2012 ruling, the Court was not requested to and did not consider the maximum punishment for any clause 1 or 2 offense or guilty plea involving a residuum of the elements charged.

On 15 October 2012, the Defense filed a Notice of Plea, Forum, and Expected Motions. On 23 October 2012, the Defense emailed the Court a Defense Revised Notice of Plea and Forum that is different from the 15 October 2012 submission in that it proffers pleas involving a residuum of elements. On 23 October 2012, via email, the Court ordered the Defense to provide a specification by specification breakdown of the maximum punishment by specification based on the proposed defense plea. On 25 October 2012, the Defense emailed the Court the Defense Calculation of Maximum Punishment with the calculations reached relying on the Court's 19 July 2012 order. This reliance was misplaced as the 19 July 2012 order does not address clause 1 and 2 lesser included offenses with a residuum of elements as contemplated by the accused's proferred pleas.

On 18 October 2012, the Court in consultation with the parties, established the following suspense dates for filings regarding the accused's proferred pleas and maximum punishments based on the accused's proferred pleas: 5 November 2012 filing; 16 November 2012 response; 23 November 2012 reply. Any litigation involving the accused's proferred pleas is scheduled to be addressed during the Article 39(a) session 27 November 2012 – 2 December 2012.

ORDERED: The parties will address the following issues in their filings regarding the accused's proferred pleas specification by specification:

- 1. Is the proferred plea a lesser included offense of the charged offense or does it contain amendments to the specification requiring Convening Authority approval to be a referred offense? *U.S. v. Morton*, 69 M.J. 12 (C.A.A.F. 2010).
- 2. Assuming the Court accepts the proferred plea as a lesser included offense of the Charged offense or the Convening Authority approves amendment of the specification, what is the maximum punishment for each specification in accordance with the accused's proferred plea IAW RCM 1003(c)((1)(B) and *United States v. Beaty*, 70 M.J. 39 (C.A.A.F. 2011).

So ORDERED this 26th day of October 2012.

DENISE R. LIND

COL, JA Chief Judge, 1st Judicial Circuit